IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.338 OF 1996

The State of Maharashtra .. Appellant

Versus

Balasahab Vithoba Bangal ..Respondent

Ms.M.H.Mhatre APP for the applicant.

Mr.B.G.Tangsali for Respondent

Coram : R.S.Mohite, J

Date : 28.11.2007

PC

1. This appeal against acquittal is filed by the State impugning the judgment and order dated 17th January, 1996 passed by the Additional Sessions Judge, Thane in Sessions Case No.375 of 1989.

2. By the impugned judgment and order, the Sessions Court has acquitted accused Balasahab Bangal (hereinafter referred to as the accused) for an offence punishable under section 498 A and 306 of IPC.

3. The prosecution case was that the accused had married one Neetanjali daughter of PW 5 Dinesh Wadnekar on 14th February, 1988. After marriage the

accused and Neetanjali were residing with PW5 Dinesh Wadnekar. One Jagannath Titne was residing in the neighbourhood. In the month of sharavan of 1988, there was satyanarayan pooja in the house of Jagannath Titne and therefore Titne had invited all the family members of the Wadnekar family including their son-in-law the accused. The accused did not go to the house of Jagannath for the pooja and also did not allow his wife Neetanjali to go for the pooja. Later, on 14th September, 1988 the accused came home along with a friend and after having tea they both went out. Sometime later the accused came home and when asked he said that he had taken dinner outside. Hearing this, the deceased Neetanjali starting weeping. When PW 5 Dinesh Wadnekar her father asked her as to why she was weeping she disclosed that the accused had not taken lunch and hence she had also not taken lunch. When PW 5 Dinesh Wadnekar asked about this to the accused, he told his father-in-law that Neetanjali was not talking properly with him and was not taking meals with him. He also told her father that Neetanjali was not properly paying attention towards him.

4. On 18th September, 1988 the accused told PW 5 that he had obtained a rental premises in Kalyan and that he was shiting to the said premises alongwith Neetanjali. The accused and Neetanjali thereafter left Dombivli together for Kalyan and started

residing on their own.

5. According to the prosecution case, the accused was harassing Neetanjali and suspecting her character. He used to beat her. In this background, on 24th October, 1988 PW 5 Dinesh Wadnekar received a phone call from an unkown person informing him that his daughter Neetanjali was sick. The person asked him as to why he was not paying attention to her daughter whenever she required. On 26th October, 1988 PW 5 Dinesh Wadnekar sent his daughter Sunita to meet Neetanjali at Kalyan. At Kalyan, after some initial coaxing, Neetanjali allegedly informed her sister Sunita that since last one week the accused was harassing her. He was telling her that the marriage was not properly celebrated and she was not paying proper attention to him. Neetanjali further disclosed to Sunita that her husband was suspecting her character and was saying that she was not of a good character. Sunita also noticed an injury on her right palm. On inquiry Neetanjali disclosed to her that her husband used to touch lighted cigarette on her body. Neetanjali requested Sunita not to tell anything to her father PW 5 Dinesh Wadnekar.

6. On 31st October, 1988 at about 8.30 at night the accused came home after drinking liquor and informed Neetanjali that she was not a good person and she

looks at somebody with a bad intention and was acting in such manner. Hearing this, Neetanjali got angry. She went to the kitchen and poured kerosene on herself and set herself on fire. Admittedly, the accused seeing his wife on fire tried to extinguish the fire. In this entire process, Neetanjal suffered 94 % burns whereas the accused also suffered 40 to 45% burns. They were both removed initially to Kalyan Hospiital and from there were shifted to Ulhasnagar Central Hospital where they were examined by PW 5 Dr.Kundi The record incidates that subsequently the deceased was shifted to Sion Hospital whereas the accused was shifted to KEM Hospital in Bombay. While the deceased was in Ulhasnagar Central Hospital she gave a dying declaration (Exhibit 109) on 1st November, 1988 between 12.15 and 12.30 p.m. In the dying declaration, she talks about her husband coming home drunk and telling her that she was looking at some one with improper intention. She further stated in her dying declaration that therefore she got angry and she put herself on fire. Ultimately the deceased Neetanjali expired on 11th November, 1988 and 5 days thereafter PW 5 Dinesh Wadnekar filed an FIR against the present accused person.

7. I have heard both sides and perused the entire record. In my view, there are cogent and plausible reasons why the Sessions Judge has acquitted the

accused.

8. The record indicates that two incidents of alleged cruelty which occured in the month of shravan of 1988 and on 11th September, 1988 are both found to be improvements upon the police statement of PW 5 Dinesh Wadnekar and that of PW 2 Nandini Kale. Though these witnesses have talked about these two incidents, they had not stated so before the police. PW 2 Nandini Kale then claims to have gone to the house of deceased on 26th October, 1988 and the deceased is said to have made several disclosures to her including the fact that the accused had caused injury by touching a lighted cigarette on her palms. This also has been found to be an improvement on police statement.

9. In so far as the dying declaration is concerned, even if the same is totally accepted it is difficult to hold that there was any mens rea involved on behalf of the accused.

10. The Apex Court in the case of Sanju alias Sanjay Singh Sengar vs State of M.P. reported in (2002) 5 Supreme Court Cases 371 has observed that mens rea is an essential ingredient for committing an offence punishable under section 306 IPC. In that case, the act of the accused compelling the deceased " to go and die " which resulted in the

deceased hanging himsaelfafter two days was held not to be an act of instigation and it was further observed that presence of mens rea is the necessary concomitant of instigation.

11. In an earlier judgment of the Apex Court in the case of Ramesh Kumar vs State of Chhattisgarh reported in (2001) 9 SCC (Cri) 618, the facts were that there was a quarrel between the husband and the wife. The husband informed the wife that she was free to do whatever and she can go whereever she likes. Feeling angered and depressed the wife set herself on fire. On these facts, later on she gave a dying declaration indicating therein the aforesaid reasons as to why she had set herself on fire. On these facts, the Apex Court held that there was no instigation on the part of the husband and acquitted the accused. The facts are some what similar in the present case. The Apex Court further observed that the conduct of the accused trying to put of the fire and taking his wife to the hospital also "improbablise" the theory of his having abetted suicide. In the present case also the wife committed suicide because of the quarrel. It is her own version thatherhusband had consumed liquor. On getting angry she has taken this unfortunate step. The accused has also made an attempt to save her and he himself suffered 40 % to 45 % burns which required him to be admitted in the hospital for 1 to

3 1/2 months. In the facts of the present case, I find that there is no instigation and therefore no abetment to commit suicide.

12. The reasoning of the judgment of the trial Court therefore, cannot be faulted with and we are in an appeal against acquittal. Accordingly, Appeal is dismissed.

(R.S.Mohite, J)